

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telecommunications Relay Services and Speech-)	CG Docket No. 03-123
to-Speech Services for Individuals with Hearing)	
and Speech Disabilities)	
)	
Structure and Practice of the Video Relay Service)	CG Docket No. 10-51
Program)	
)	

COMMENTS IN SUPPORT OF SPRINT'S PETITION FOR WAIVERS

*Telecommunications for the Deaf and Hard of Hearing, Inc.
National Association of the Deaf
Association of Late-Deafened Adults, Inc.
Hearing Loss Association of America
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Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”), through its undersigned counsel, and National Association of the Deaf, Association of Late-Deafened Adults, Inc., Hearing Loss Association of America, Cerebral Palsy and Deaf Organization, and American Association of the DeafBlind (collectively “Consumer Groups”) submit these Comments in response to the Public Notice (“Notice”) issued by the Commission’s Consumer and Governmental Affairs Bureau (“Bureau”) in the above-captioned proceedings.¹ The Bureau’s Public Notice sought comment on Sprint’s Petition for Interim Waivers.²

I. Introduction and Summary

A. Background

Title IV of the Americans with Disabilities Act of 1990 (ADA), which added section 225 to the Communications Act of 1934, as amended requires that the Commission ensure that

¹ *Consumer and Governmental Affairs Bureau Seeks Comment on Request by Sprint Corporation for Interim Waivers Regarding the Compensation Rate for Internet Protocol Relay Service*, Public Notice, CG Docket Nos. 03-123, 10-51, DA 19-223 (rel. March 28, 2019).

² Sprint Corp. Request for Interim Waivers, CG Docket Nos. 03-123 and 10-51, (filed Mar. 21, 2019) (“Petition”).

telecommunications relay services (TRS) “are available to the extent possible and in the most efficient manner” to individuals in the United States who have hearing or speech impairments.³

Under Section 225, the Commission must ensure that members of the speech and hearing impaired community have access to communications services that are functionally equivalent to those available to users that do not encounter challenges with their hearing or speech. Relay services enable individuals who are deaf, hard of hearing or DeafBlind or who have a speech impairment to communicate through the telephone system with another person in a manner that is functionally equivalent to the ability of persons without these hearing and/or speech impairments.⁴ One form of TRS is IP Relay, which allows “an individual with a hearing or a speech disability to communicate in text using an Internet Protocol-enabled device via the Internet, rather than using a text telephone (TTY) and the public switched telephone network.”⁵

Section 225 further bars the Commission from requiring users to pay for the costs of relaying TRS calls, including IP Relay.⁶ Instead, the Act adopts a cost recovery regime whereby TRS providers receive compensation for the costs they incur providing TRS from the TRS Fund that the Commission administers.⁷ Such compensation is currently based on per-minute rates the Commission adopts annually.

The Commission has implemented a flexible and broad approach to determining the services eligible for TRS funding, recognizing that “the provision of TRS has evolved as new forms of technology have been developed and as consumers have identified the particularized

³ 47 U.S.C. § 225(b)(1).

⁴ 47 U.S.C. § 225(a)(3) (definition of “TRS”).

⁵ 47 C.F.R. § 64.601(a)(18).

⁶ 47 U.S.C. 225(d)(1)(D).

⁷ 47 U.S.C. § 225(d)(3); 47 C.F.R. § 64.604(c)(5).

needs of persons with hearing and speech disabilities.”⁸The Commission has broadly interpreted the charge from Congress under the ADA and has not limited its definition of TRS to certain categories of service.⁹ Indeed, Section 225 explicitly directs the Commission to refrain from regulation that “discourage[s] or impair[s] the development of improved technology.”¹⁰

Consistent with the direction of Congress, the Commission has long recognized that there is no one-size-fits-all form of TRS that meets the needs of all users. Indeed, the Commission has encouraged innovation in the provision of relay services.¹¹ Preserving the broad array of existing TRS available is integral to the Commission’s goals of advancing universal service and access to functionally equivalent service.

B. The Commission’s Adjustments to the IP Relay Cost Recovery Methodology

In 2007, the Commission adopted a three-year price-cap compensation regime for IP Relay services.¹² The Commission designed the price cap methodology to reflect cost increases due to inflation that are then offset by decreases based on productivity gains. The Commission’s goal was to “encourage IP Relay providers to become more efficient.”¹³ In the 2013 *TRS Rate Methodology Order*, the Commission adjusted the price cap methodology for IP Relay by increasing the applicable efficiency factor use for the prior two three-year periods (2007-2010

⁸ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Internet-based Captioned Telephone Service*, Declaratory Ruling, 22 FCC Rcd. 379, 387, ¶ 20 (2006).

⁹ *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; 18 FCC Rcd. 16121, 16124, ¶ 8 (“*Captioned Telephone Declaratory Ruling*”).

¹⁰ 47 U.S.C. § 225(d)(2).

¹¹ *See Captioned Telephone Declaratory Ruling*, 18 FCC Rcd. at 16124, ¶ 15.

¹² *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 22 FCC Rcd. 20140, 20159, ¶ 43-45 (2007).

and 2010-2013) from 0.5% to 6.0% claiming a need to “take account of the rapid cost declines characteristic of this industry segment.”¹⁴ The Commission adopted the TRS Fund Administrator’s proposed rate for 2013-14 that reflected almost a 20 percent reduction in the compensation rate from 2012-13.¹⁵

Predictable results followed. In 2013, three of the then five IP Relay providers abandoned the IP Relay market.¹⁶ A fourth soon followed.¹⁷ These rapid exits from the IP Relay market left Sprint as the only IP Relay provider available to users reliant on IP Relay for their communications lifeline to friends, family, employers and the outside world.

That explains the current predicament the Commission faces. The Commission has long recognized the value of IP Relay, namely for the DeafBlind among others. Even when the Commission sought to reform the IP Relay compensation methodology in 2013, its aim was to preserve and enhance the market for IP Relay, not to euthanize it.

Unfortunately, the record is clear that the Commission’s changes to the IP Relay compensation methodology adopted in 2013 have wreaked havoc. As a direct result of the Commission’s decision to reduce compensation, providers quickly exited the IP Relay market, leaving Sprint as the only company continuing to offer this vital service.

¹³ *Id.*, ¶ 43.

¹⁴ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 28 FCC Rcd. 9219, 9225, ¶ 20 (2013) (“*2013 TRS Rate Order*”).

¹⁵ *Id.* at 9222, ¶ 13.

¹⁶ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Order, 29 FCC Rcd. 8044, 8048-49, ¶ 13 (2014) (“*2014 TRS Rate Order*”).

¹⁷ Letter from John F. Cannon, Counsel to Purple Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CG Docket No. 03-123 (filed Oct. 15, 2014) (announcing Purple’s exit from the IP Relay market).

Sprint has resisted the easy way out of exiting the market and has repeatedly been forced to seek relief from the Commission to adjust the compensation rate on an annual basis.¹⁸ The Commission has made incremental fixes that Sprint has requested in order to patch the myriad potholes in the Commission's IP Relay framework so that Sprint can continue to provide this needed service.¹⁹ Sprint also has urged the Commission to revise materially its formula for determining compensation for IP Relay to eliminate the need for Sprint to seek annual revisions to the Commission's compensation rate.²⁰ The Consumer Groups continue to urge the Commission to take prompt action and grant Sprint's Petition.²¹ In the meantime, however, Sprint again has to seek temporary adjustments to the compensation rate in order to recoup the costs it incurs providing IP Relay Service.

C. Sprint's Petition

Sprint seeks the following relief under the Commission's current IP Relay compensation methodology "until such time as the Commission establishes a longer-term, compensatory rate methodology:"²²

¹⁸ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Order, 33 FCC Rcd. 6300, 6304, ¶ 11 (CGB 2018).

¹⁹ *See id.*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Order, 32 FCC Rcd. 5142, 5145, ¶ 11 (CGB 2017) ("2017 TRS Order"); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 31 FCC Rcd. 7246, 7251, ¶ 16 (CGB 2016) ("2016 TRS Rate Order"); *2014 TRS Rate Order*, 29 FCC Rcd. at 8052, ¶ 19.

²⁰ Petition for Rulemaking of Sprint Corp., RM 11820 (Nov. 1, 2018); *Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Rulemaking by Sprint Corporation to Establish a New Rate-making Methodology for IP Relay Service*, Public Notice, DA 18-1137 (rel. Nov. 7, 2018).

²¹ Reply Comments of Telecommunications for the Deaf and Hard of Hearing, Inc., et al., CG Docket No. 03-123, RM-11820 (filed Dec. 21, 2018).

²² Sprint Waiver Petition at 4.

1. Sprint seeks expansion of its current waiver,²³ allowing it to recover costs incurred for certain targeted outreach to the DeafBlind community,²⁴ so that it can provide (and recover the costs of providing) outreach to the entire universe of IP Relay users and potential users.²⁵
2. Sprint further seeks an interim waiver regarding reimbursement for its overhead costs associated with providing IP Relay.
3. Sprint seeks a waiver of the Commission's prohibition on cost recovery for research and development, seeking cost recovery in order to modernize and upgrade Sprint's IP Relay Services commensurate with modern communications technology.

As explained below, the Consumer Groups urge the Commission to grant each of Sprint's waiver requests. While the Consumer Groups cannot opine on the accuracy of Sprint's actual and projected costs, it is imperative that the Commission take all reasonable steps to ensure the continued availability of IP Relay so that users receive the functionally equivalent communications services to which they are entitled under the Act. Sprint claims that "[w]ithout a sustainable rate structure, Sprint will no longer be able to provide this service."²⁶ The Consumer Groups urge the Commission to respond appropriately to the risk that the lone provider of IP Relay would exit the market.

IP Relay remains the primary connection many users have to family, friends, employers and the outside world generally. IP Relay is typically favored by the DeafBlind and also by users who lose their hearing later in life and cannot communicate using American Sign Language (ASL). Preserving IP Relay thus remains critical and the Commission should not continue to

²³ The Commission granted Sprint waivers with respect to IP Relay rates in both the 2018-19 and 2017-18 funding years. *See 2018 TRS Rate Order*, 33 FCC Rcd. at 6305, ¶ 13; *2017 TRS Rate Order*, 32 FCC Rcd. at 5146, ¶ 13.

²⁴ Petition at 6 citing *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Order, 31 FCC Rcd. 7246, ¶¶ 18-19 (2016).

²⁵ Sprint Waiver Petition at 4.

²⁶ *Id.*

shortchange the only provider remaining in the IP Relay market and thus should grant Sprint's requested interim waivers.

II. Maintaining IP Relay is Vital for Users Unable or Unlikely to Use Other Forms of TRS

IP Relay is the preferred method of communication for some deaf, hard of hearing, late-deafened and particularly DeafBlind individuals and those with additional disabilities, as well as their hearing contacts. The Commission recognizes that

certain categories of consumers currently rely upon IP Relay service as their sole or primary means of communicating by telephone, including consumers who are deaf-blind or have speech or additional disabilities, as well as deaf or severely hard-of-hearing consumers who do not know or are not comfortable with the use of American Sign Language.²⁷

Importantly, many hearing persons and those with hearing or other physical challenges prefer to use IP Relay exclusively or in certain situations because the Communication Assistant (CA) will relay by voice the message the user types on the computer word-for-word, a feature many users find important, particularly for conversations requiring precise wording. In contrast, in conversations via Video Relay Service, the CA summarizes the message as accurately as possible, but not necessarily word-for-word. In addition, some in the Deafblind community rely solely on IP Relay because they cannot use any other forms of TRS or do not know how to. Similarly, some with mobility disabilities may rely on IP Relay due to a physical limitation or because they are not able to sign clearly in ASL sufficiently to communicate using VRS.

Sprint explains that some users prefer IP Relay because it does not require the ability to see an interpreter on a screen as in VRS. IP Relay can also be “enhanced with adaptive

²⁷ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 29 FCC Rcd. 16273, ¶ 7 (2014); Sprint Waiver Petition at 1.

technologies, such as Braille or screen readers; and high-speed internet is not required to use the service.”²⁸ In addition, users who lose their hearing later in life rely on IP Relay that often provides “the only way someone who is deaf or hard of hearing can reach 911 while outside of the home.”²⁹

III. The Commission Must Grant Sprint’s Waiver in Order to Maintain Viable IP Relay Service

The Consumer Groups do not want Sprint to exit the market for IP Relay. While Sprint has not suggested that it would exit the market if it does not receive the requested waivers, it reasonably warns the Commission that it cannot continue providing IP Relay without a sustainable compensation mechanism.³⁰ Sprint’s exit would be disastrous for the community of persons reliant on IP Relay. Abandoning IP Relay and the users that rely on such service would conflict with the Commission’s responsibilities under the ADA to provide functional equivalent calling services.

In their *TRS Policy Statement*, the Consumer Groups stated that “TRS users must have a wide selection of choices regarding equipment and software interfaces as well as hardware options, *TRS program services* and *methods* of making or receiving relay calls.”³¹ This is

²⁸ Sprint Waiver Petition at 2.

²⁹ Sprint Waiver Petition at 1, quoting Letter from Andrew S. Phillips, National Association of the Deaf, to Marlene H. Dortch, FCC Secretary, CG Docket Nos. 12-38 and 03-123, at 1 (Aug. 23, 2012).

³⁰ See Sprint Rulemaking Petition at 4 (stating, “Sprint can only commit to providing IP Relay service through June 30, 2019 unless the Commission takes action to adopt a compensatory rate for this vital service.” (citations omitted)).

³¹ See Consumer Groups’ TRS Policy Statement – Functional Equivalency of Telecommunications Relay Services: Meeting the Mandate of the Americans with Disabilities Act at 2 (Apr. 12, 2011) (emphasis added) (“*TRS Policy Statement*”), <https://ecfsapi.fcc.gov/file/7021748016.pdf>.

consistent with the Commission's recognition that the Act's definition of TRS is broad and flexible, accommodates a wide array of TRS and is not limited to certain forms of TRS.³²

As the Consumer Groups have explained in Objective 4.3 of their TRS Policy Statement, the TRS user community should have access to a broad selection of TRS options. This means the Commission should ensure the availability of an "array of services and features that meet diverse communication needs and provide an 'equivalent conversation experience' with all forms of TRS."³³ And that the Commission continues to foster[]... a wide range of options comparable to those provided to hearing callers, such as prompt, comprehensive customer care and service for TRS users."³⁴ Abandoning support or even adequate support as described below, for IP Relay will thwart this objective.

1. The Commission Should Allow Sprint to Recover its Costs for Expanded Outreach to the IP Relay User Community

Sprint seeks an interim waiver that would allow it to recover the costs of outreach to the IP Relay community of users and potential users. In particular, Sprint seeks to incur costs that will benefit all users of IP Relay, and has detailed its anticipated costs for this increased outreach. Sprint's increased outreach costs would include:

- Retaining dedicated employees devoted to DeafBlind outreach;
- Retaining a dedicated employee and a contract employee devoted to general IP Relay outreach;
- Travel and related expenses;
- Advertising/promotional outreach;

³² See *Captioned Telephone Declaratory Ruling*, 18 FCC Rcd. at 16124, ¶ 8.

³³ TRS Policy Statement at 9.

³⁴ *Id.*

- Professional fees/interpreter support;³⁵

The Commission has already approved of the incremental outreach Sprint has conducted since the rapid exits of other IP Relay providers from the market in 2013-14. Last year, the Commission concluded that for “consumers who are deaf-blind, IP Relay service is often the sole or primary means of communicating by telephone, and outreach to such consumers requires specifically targeted efforts that take account of their particular disabilities.”³⁶ It then found that that Sprint’s IP Relay improvements and

outreach activities have been beneficial and continue to be needed to effectively educate consumers who are deaf-blind regarding IP Relay service, ensure that they are aware of service improvements instituted to benefit this group, and offer members of the deaf-blind community an opportunity to provide feedback on making the service more accessible to and usable by individuals who are deaf-blind.³⁷

In 2016, the Commission allowed Sprint to recover costs of its outreach to users of IP Relay services, concluding that its concerns about provider-specific outreach were less applicable in the IP Relay market where Sprint is the sole provider of service.³⁸ The Commission further found that the “absence of other providers in the IP Relay market continue to have a significant impact on deaf-blind consumers.”³⁹ In 2017, the Commission determined that there continues to be good cause to allow Sprint to recover outreach costs as it was important “for

³⁵ Sprint Waiver Petition at 7-8.

³⁶ 2018 TRS Order, 33 FCC Rcd. at 6303, ¶ 10.

³⁷ *Id.* at 6303-04, ¶ 10.

³⁸ 2016 TRS Rate Order, 31 FCC Rcd. at 7251, ¶ 16.

³⁹ *Id.* ¶ 18.

Sprint to conduct outreach to deaf-blind consumers”⁴⁰ and that “Sprint’s outreach activities were beneficial and continue to be needed.”⁴¹

The Consumer Groups echo Sprint’s argument that the Commission’s original justifications for prohibiting reimbursement for outreach costs — such as concerns outreach was primarily devoted to win-back campaigns⁴²—no longer make sense given changes in the market.⁴³ The Consumer Groups also agree that the iTRS National Outreach Program does not address the “critical need” to educate potential IP Relay users about the benefits IP Relay offers.

2. The Commission Should Permit Sprint to Recover its Costs for Research and Development for Upgraded IP Relay Services

The Consumer Groups continue to urge the Commission adopt a rate methodology for IP Relay that supports all appropriate costs of the service along with an appropriate profit margin as determined by the Commission. Such cost methodology must also support research and development for maintenance and improvements to IP Relay service. Support for research and development is integral to the ability of IP Relay providers to “‘raise the bar’ in technological design,”⁴⁴ and ensure that IP Relay keeps up with technological advancements on consumer devices on which users rely for communications.

Sprint argues that its cost recovery for research and development “would be used to update and upgrade the functionality and security of the IP Relay web portal and mobile

⁴⁰ 2017 TRS Rate Order, 32 FCC Rcd. at 5145, ¶ 11.

⁴¹ *Id.* at 5146, ¶ 13.

⁴² Sprint Waiver Petition at 7 citing *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd. 8618, 8635, ¶ 31 (2013).

⁴³ Sprint Waiver Petition at 8.

⁴⁴ Consumer Groups TRS Policy Statement, Objective 3.2 at 9.

application.”⁴⁵ Sprint correctly states that the major mobile app platforms and web browsers are continually updated with new features. Functional equivalence should not relegate IP Relay users to the basic functionality available on outdated mobile apps and web browsers. If functional equivalence has any meaning it must mean that all TRS users have the ability to communicate using the same up to date platforms used by persons without speech or hearing impairments.

Similarly, research and development is warranted for enhancing IP Relay service so that users can easily adjust pacing. As Sprint explains, “DeafBlind users who rely on a braille reader may require the normal pace to be decreased in order to effectively use IP Relay.”⁴⁶ Today, however, users cannot set or adjust the pacing on their own; instead, users must adjust pacing on each call, which then creates an impediment to using the service; one that the hearing community does not face when making telephone calls. The Consumer Groups thus urge the Commission to grant Sprint’s waiver request so that Sprint can continue innovating and improving the functionality of IP Relay services consistent with the statutory goal of providing IP Relay services on a functionally equivalent basis.

3. The Commission Should Permit Sprint to Recover a Portion of its Overhead Costs

The Consumer Groups have consistently recommended that the Commission support TRS through rates that are sufficient to compensate providers for the services and service improvements necessary to meet the ADA’s functional equivalence standard. However, TRS providers should not be forced to subsidize their relay services with revenues from other services. The Consumer Groups understand Sprint’s argument that Sprint alone provides both TRS and non-TRS communications services and that in doing so it incurs general and

⁴⁵ Sprint Waiver Petition at 10.

⁴⁶ *Id.* at 11.

administrative costs shared with Sprint's other lines of business.⁴⁷ The Consumer Groups thus agree with Sprint that the Commission should allow Sprint to recover a modest amount of its shared overhead from the TRS Fund due to its provision of IP Relay.

The Consumer Groups also agree with Sprint, that the mechanism for such recovery should not be so burdensome that recovering such overhead is not worthwhile or that the recordkeeping requirements are so burdensome that Sprint would consider abandoning the IP Relay market.⁴⁸ Sprint's suggestion to allow a recovery of its overheard costs "commensurate with the percentage of Sprint's revenues that are derived from providing IP Relay,"⁴⁹ is reasonable and should be granted until the Commission adopts a permanent sustainable cost recovery methodology that ensures the continued availability of IP Relay.

Sprint's request for a waiver regarding its overhead costs is consistent with the overarching principle that the Commission should provide adequate compensation to all TRS providers for their services. This is of heightened importance in a market where only one provider remains.

IV. Conclusion

For the aforementioned reasons, the Commission should adopt grant Sprint's interim waivers allowing Sprint to obtain additional cost recovery for:

1. Outreach activities delineated in Sprint's Petition in order to expand its outreach efforts to the entire universe of IP Relay users and potential users.⁵⁰
2. Reimbursement for its overhead costs associated with providing IP Relay.

⁴⁷ Sprint Waiver Petition at 8.

⁴⁸ *See id.* at 8.

⁴⁹ *Id.*

⁵⁰ *See id.* at 4.

3. Research and development in order to modernize and upgrade Sprint's IP Relay Services commensurate with modern communications technology.

The Consumer Groups further renew their request that the Commission adopt a new and sustainable rate methodology for IP Relay that will ensure continued services to those that rely on such service for functionally equivalent communications.

Respectfully submitted,

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